

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Leonard Lee McCray,)	
)	Cr. No. 4:09-cr-00519-5-RBH
Petitioner,)	C/A No. 4:13-cv-03146-RBH
)	
vs.)	ORDER
)	
United States of America,)	
)	
Respondent.)	
_____)	

This matter comes before the Court upon the *pro se* Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (“Motion to Vacate”) [Doc. # 51], filed by Petitioner , on November 19, 2013. In the Motion to Vacate, Petitioner argues he is entitled to resentencing on the basis that his prior convictions for South Carolina assault and battery of a high and aggravated nature (ABHAN) no longer qualify as violent felonies under the Armed Career Criminal Act, citing the recent Fourth Circuit decision of *United States v. Hemingway*, __ F3d__, No. 12-4362 (4th Cir. October 31, 2013). In a November 21, 2013, filing, [Resp., Doc. # 55], Respondent waived the statute of limitations as to this issue and conceded that, applying the *Hemingway* decision to the facts of Petitioner’s case “demonstrates that Petitioner is entitled to resentencing.” Respondent “urges” this Court to resentence Petitioner.

Having thoroughly reviewed the record in this case, and in light of Respondent’s recent filing, **IT IS ORDERED** that Petitioner’s Motion to Vacate [Doc. # 51] is **GRANTED**.

IT IS FURTHER ORDERED that Probation should review the Government’s Response at Doc. #55 , and revise Petitioner’s Pre-Sentence Report (“PSR”) accordingly. A hearing will then be scheduled for resentencing.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
November 25, 2013